THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.Nos.24806 OF 2001&20200 of 2003

Date:22-08-2005

Between:

1 R.V.Krishnaiah s/o. R.S.N.Murthy
Hagglunds Dension Ltd., C/o. Denison Hydraulic Employees Union
H.No.11-3/1 Sramik Bhavan Shantinagar Colony,Near Bus Stand,

PATNCHERU-502319 and others.

..... PETITIONERS

AND

1 The Presiding Officer, Labour Court -II
Chandra Vihar, M.K.Jahi Road, Hyderabad – 500001 and others.

RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.Nos.24806 OF 2001&20200 OF 2003

COMMON ORDER:

Since the issue involved in both the writ petitions is interconnected, they are being disposed of by a common order.

W.P.No.24806 of 2001 is filed challenging the award dated 10-01-2000 passed in I.D.No.26 of 1997 by the Labour Court-II, Hyderabad, as illegal and arbitrary and consequently to direct the second respondent to put back the workmen in the original positions at the respondent company at Patancheru, Medak District, with all consequential benefits, whereas W.P.No.20200 of 2003 is filed challenging the award dated 08-05-2003 passed in M.P.No.71 of 2000 by the Labour Court-II, Hyderabad, as illegal and arbitrary and for a consequential direction to the second respondent to pay the wages to the employees of the petitioner union from the date of award in I.D.No.26 of 1997 i.e., from 31-12-1999 till the date of their reinstatement by putting them back in service at their factory at Patancheru.

The brief facts that are necessary for the disposal of the present writ petitions may be stated as follows:

The workmen of the second respondent's company have formed into the petitioner union, which was registered as a Trade Union under the provisions of the Trade Unions Act, 1926. All the workmen are permanent workmen and they were holding various posts like Fitter, Carpenter, Machine Operator, Quality Inspector, Helper, Clerks, etc., and they come under the definition of 'workman' under the Industrial

Disputes Act, 1947 (for short 'the Act'). The petitioner union was recognized by the respondent management. The union held several negotiations with the management and entered into various settlements pertaining to the service conditions of the workmen. The second respondent company manufactures pressure pump valves and systems. The petitioner union submitted a charter of demands, which include wage revision, since the previous settlement dated 28-11-1991 expired on 31-05-1994. During the operation of the settlement, the management had illegally retrenched about 26 employees on 09-06-1993. The Union raised Industrial Dispute against the illegal retrenchment and ultimately, the management entered into settlement on 21-10-1993 with the petitioner union and agreed to take back all the employees in a phased manner. However, the third batch of the retrenched employees were

not taken back. The union had also raised a dispute demanding regularization of all the 26 retrenched employees. The management became hostile and laid off about 25 workmen

on 17-10-1994 and later on, illegally declared lock out on

23-10-1994. After intensive negotiations, a settlement was reached on 07-12-1994 and the workers reported for duty on

08-12-1994. Subsequently, the management had transferred various employees to the sub-contractors' organizations situated in and around Hyderabad which are in no way connected with the respondent management and also not part of the respondent company. It is submitted that out of 94 employees, 46 employees have been transferred. Some of the workmen, who have gone to the sub-contractors as per the orders of the respondent management, were turned away by the

sub-contractors' saying that they are not part of respondent management and are not working under the respondent management and did not allow the workmen to enter into their establishment. When the employees came back to the respondent company to report the same, the respondent management did not allow them to

enter into the factory.

The management terminated the services of 28 employees out of the 42 employees for disobedience of the transfer orders.

The 28 workmen raised Industrial Disputes individually before the Labour Court and the Labour Court passed a common award setting aside the termination orders and upholding the transfer orders. Challenging the award of the Labour Court with regard to upholding the transfer orders, the present writ petition is filed.

Learned counsel appearing for the petitioner union contended that the transfer of the employees to sub-contractors is not based upon any tripartite of agreement; that the employees of the petitioner union were appointed by the second respondent company and on the allegation that they were involved in the union activities, they have been transferred to the far off places, and therefore, it is an unfair labour practice; that there is no tripartite of agreement between the sub-contractor and the employees of the petitioner union; that the evidence on record shows that when the workers went to join in the sub-contractors' companies, they have refused; that the findings of the Labour Court are not based upon proper appreciation of evidence on record, and therefore, they are perverse and hence, he prays to allow the writ petitions.

On the other hand, the learned counsel appearing for the second respondent company contended that the employees of the petitioner union have been transferred to the sub-contractors to supervise the work and products of the management; that as soon as the work is completed before the sub-contractors, the workers will come back and join in the second respondent company; that it is some adjustment because of less production in the unit so as to survive that the employees did not report to the duty before the sub-contractors; that after reinstatement, the management of the second respondent has taken the employees back, and thereafter, they were transferred to

the place where they have worked; that since the employees of the petitioner union were not reported for duty, they are not entitled for any back wages and hence, he prays to dismiss the writ petitions.

This Court can interfere with the orders of the subordinate Courts or Tribunals, where there is an error manifest and apparent on the face of the proceedings, such as when it is based on clear misreading or utter disregard to the provisions of law and a grave injustice or gross failure of justice as occasioned thereby. It is also well settled that while exercising the power of judicial review, the Court is more concerned with the decision making process than the merits of the decision itself. While examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of the given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to this Court to review the evaluation of the facts of the decision maker.

All the employees of the petitioner Union, which is a registered Trade Union, are the permanent employees. In the month of November, 1995, some of the employees have been transferred to in and around Hyderabad and some others
were transferred to various offices of the second respondent company, whereas some other employees were transferred to the sub-contractors situated in and around Hyderabad. Out of 94 employees, 46 employees have been transferred. One of the terms of the appointment, even according to the employees,
is that the workmen would be liable to be transferred to any
office or establishment forming part of the organization of the respondent company. Admittedly, some of the persons were transferred to the sub-contractors. There is no tripartite of agreement between the workmen, respondent management and the third party contractors. Challenging the transfer orders,
the employees raised an Industrial Dispute before the Tribunal. Upon appreciation

of evidence, the Tribunal held that the documents would clearly go to show that some of the employees were transferred to the sister concerns of the respondent and the remaining employees were transferred to the units to which the respondent had entrusted its work. Therefore, the transfers effected by the respondent are legal and valid.

Generally, the exercise of the power of transfer is not depended upon the consent of the employee. But, at the same time, no employee shall be transferred from one employer to another nor be transferred from one cadre to another without his consent. Unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions, the Court cannot interfere with it.

Ex.M-126 is the bunch of 31 office copies of the appointment orders of the workmen, who raised Industrial Dispute. One of the clauses of the appointment order reads as follows:

> "the workmen will be liable to be transferred to any department, office or establishment forming part of the organization of the Respondent and he will abide by the working hours of the department, office or establishment concerned, without any extra remuneration."

Another clause reads as follows:

> "the workmen is liable to be transferred from one section/department to the other, on shift to the other and from one place to other as considered necessary by the management from time to time irrespective of the nature of the work, distance or place and in case of transfer no extra wages or allowances will be paid."

So, the above conditions, which are agreed between the workmen and the respondent management, would go to show that the workmen are liable to be transferred to any office or establishment forming part of the organization of the respondent. There will not be any difficulty insofar as the employees who have been transferred to any office or establishment forming part of the organization of the

respondent. Even if it is a far off place, no interference can be called for. But, the main grievance of the employees is that majority of the employees were transferred to the sub-contractors with whom there is no tripartite of agreement between the petitioner union and the private contractors. Some of the documents filed by the management would go to show that the respondent company entrusted its work to the private contractors and that is not in dispute.

Even the witnesses of the respondent management admitted that the management transferred some of the employees to the units of sub-contractors. But, at the same time, the reason given by the management is that as per the settlement arrived at in the year 1994, the Union agreed to produce 750 pumps and 750 volves per month, but the Union failed to reach the target in any year. Even in spite of arriving at another settlement, the workers failed to increase the production to reach the target. The management also wrote to the Commissioner of Labour stating that the workers were not cooperating with the management. As there was a shortage in the production, the management entrusted the work to the sub-contractors and reduced the workload of the factory. Therefore, the employees have been transferred.

The contention of the management is that it used to supervise the work of the sister concerns of the respondent and also supervising the work of Hired Plants. Ninety percent of the work in sister concerns and Hired Plants belong to the respondent company. The evidence also would go to show that the workmen tried to meddle with machines in order to pull down the production. Therefore, the management entrusted the work to the sub-contractors. The management filed certain documents showing the work entrusted to the sub-contractors. It is also in the evidence of MW-2

that Ex.192 is the bunch of 271 slips of on duty intimations given to the employees who were deputed to the places of sub-contractors to verify the work performed for their organization. The persons, who were deputed, used to complete the work in an hour, or half day, or one day, or more than one day depending on the quantum of work entrusted to them. Though there is no tripartite of contract between the private contractors and the employees of the petitioner union, the specific stand of the management is that the workmen were transferred to supervise the work relating to the management. It is specifically stated by the Chairman of the second respondent company that they have taken a decision to transfer some of the employees temporarily to those selected industries. So, under no stretch of imagination, it can be said that the transfer is by way of victimization or to affect the service conditions of the employees of the petitioner union with regard to wages and other benefits. On the other hand, the evidence of the workmen is that the respondent has to inform well in advance prior to one month or two months prior to effecting the transfers. The evidence of WW-1 also goes to show that he accepted the appointment order and he does not know if the employees working in the respondent company were deputed to work at Jeedimetla and other places. He admitted that there are sub-contractors to carryout the work of the respondent company. He also does not know whether the entire work, where he was transferred, is done by the respondent company.

Therefore, the deployment of these employees to the

sub-contractors is not by way punishment or contrary to the terms and conditions of the appointment order. Since the workmen did not adhered to the target of production, the said work was entrusted to the sub-contractors and the petitioners have to supervise that work before the sub-contractors.

By virtue of this deployment or deputation, the service conditions of the employees of the petitioner union would not, in any way, be affected. It is not a permanent transfer to the third party contractors to whom the respondent company entrusted the work.

The learned counsel appearing for the petitioner union placed strong reliance on the decision reported in **P.K.P. BIDI FACTORY v. O.L. THENGE** , wherein it was held:

> "A contract of service being incapable of transfer unilaterally a transfer of service from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party, the effect of which would be to terminate the original contract of service and to make a new contract between the employee and the third party."

There is no dispute about the above proposition of law in view of the fact that the contract service of the employees with the respondent company is not terminated and a new contract is not made with the sub-contractors. At best, it can be said to be a deployment or supervision of the work of the respondent company.

He also relied upon another decision reported in **SURAJ PRAKASH v. UNION OF INDIA** , wherein it was held:

> "it was cruel to send a poorly paid employee from one place to a far off place."

When the deployment was denied the continuity of service and also the post carried lesser pay, then it was a new appointment. Therefore, the above decision has no application to the present facts of the case.

He also relied upon another decision reported in **NIZAM SUGARS OFFICERS WELFARE ASSOCIATION & ORS. v. GOVT. OF A.P.** , wherein it was held:

> "From the above law declared by the Supreme Court it is clear that unless there is a tripartite agreement between the employer, the employee and the third party, the services of the employee cannot be transferred to such third party."

To the same extent, he relied upon a decision reported in **M.THIRUPATHI REDDY v. A.P. CO-OP OILSEEDS GROWERS' FEDERATION LTD** , wherein it was

held:

> "an employee of one organization cannot be unilaterally transferred to another organization without his consent, it can only be effected by a tripartite agreement between the employee, the management and the third party."

The learned counsel for the petitioner contends that when an employee is transferred, he need not first report to transferred place and thereafter make representation or file a complaint through its Union. For that proposition, he relied upon a decision reported in **P.T.I. LTD v. P.T.I. EMPLOYEES' UNION** , wherein it was held:

> "A complaint otherwise on the ground of unfair labour practice is maintainable where the order is passed mala fide or in violation of the rules of service or guidelines of transfer without any proper justification."

There is no dispute about the proposition of law laid down in the aforementioned decisions. Though it is in the evidence that by adopting the unfair labour practice, the employees of the petitioner union have been transferred, but at the same time, there is also evidence to show that these employees were resorting to damage the machines so as not to increase the production and they were not achieving the targets of production as agreed between the management and the workers. Therefore, in these circumstances, the management entrusted the work of production of certain goods to the sub-contractors. The deployment is only for supervision of the work temporarily.

By such deployment or deputation, the service conditions of the employees of the petitioner union would not in any manner be affected. Therefore, it cannot be said that the respondent management adopted the unfair labour practice in transferring the workmen. If these workmen were transferred to the sub-contractors to work with them, then it can be said that the consent from the workmen is necessary. As there is no tripartite of contract between the employer,

employee and the third party contractors, these persons cannot be transferred to the sub-contractors. After transferring the employees, they did not go to the sub-contractors. One of the witnesses categorically admitted that he never visited the hired unit after his transfer. He also admitted that none of the workers, who were transferred, reported to duty. Considering all these aspects, the Labour Court gave a categorical finding that the respondent management is justified in transferring the 42 workmen to the sister concerns of the respondent or to the units which were doing the work of the respondent company. The findings of the Labour Court cannot be said to the perverse or contrary

to the evidence on record. Therefore, there are no merits in W.P.No.24806 of 2001.

Insofar as W.P.No.20200 of 2003 is concerned, a petition was filed under Section 33-C (2) of the Act claiming back wages from the date of common award till the date of reinstatement. By a common award dated 31-12-1999, the termination orders have been set aside by the Labour Court and the respondents therein were directed to reinstate the employees of the petitioner union into service with continuity of service and with 50% of the back wages. Since that award has not been implemented, the M.P. was filed. The Labour Court, after considering the evidence on record, came to the conclusion that the petitioners therein have not responded to the reinstatement orders issued to them by the respondent in view of the common award, they are not entitled to the wages still they join duty as per the said posting orders.

As the employees of the petitioner union have disobeyed the orders of the respondent management in joining the duty at their transferred places and four of the petitioners have not reached target production, their services were terminated. Therefore, they have filed an application under Section 2-A (2) of the Act challenging the termination order. The Labour court passed an award dated 31-12-1999 setting aside the termination orders and ordered for reinstatement of the

petitioners therein with 50% back wages and that award has become final.

In view of the orders in the I.D., the transfer of the employees of the petitioner union is justified. The workmen should go to the places, where they have been transferred. But, the workmen did not obey the transfer orders. They have to go and report for duty at the various places by virtue of the transfer orders.

The counsel for the petitioner contended that the reinstatement means restoration of *status quo ante*. For that proposition, he relied upon a decision reported in **SUDHAKAR BABU RAO BOOKE v. STATE OF MAHARASTRA** , wherein it was held:

> "Reinstatement means to place an employee in the same position as before and to restore him to his previous position as if his services were not terminated. Thus, reinstatement involves putting a particular person back, in law and in fact, to the same position as he had occupied earlier before his services were terminated by the employer because to reinstate a man means to place him in the position from which he was dismissed so as to restore the *status quo ante* the dismissal."

But, in this case, since the transfer orders have been effected, the question of *status quo ante* to reinstate the employees into the respondent company does not arise in view of the fact that the transfer orders passed by the respondent management were found to be justified and legal. Because the workmen did not comply with the transfer orders, the termination orders have been passed. Since the termination orders have been set aside and the transfer orders were held to be justified by the Labour Court, the employees of the petitioner union are bound to go and join in duty at the places where they have been transferred. If the employees were to be taken on reinstatement at the respondent company, but not at the places where they have been transferred, the order of the Tribunal would be nullified, because the transfer orders were held to be justified by the finding of the Labour

Court. Therefore, the above decision has no application to the present facts of the case.

The learned counsel also relied upon another decision reported in **VITTAL VENKATESH v. P.F. & A.P.M. PVT.LTD & ORS.** , wherein it was held:

> "The company cannot be heard to say that it would implement the Award of the Labour Court passed in Bombay by reinstating the workman in Pune. Therefore, the workman is justified in not joining at the place of transfer."

The above decision also has no application to the present facts of the case. There are absolutely no grounds to interfere with the impugned proceedings.

Accordingly, both the writ petitions are dismissed. No order as to costs.

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JUSTICE K.C.BHANU

Date: 22-08-2005.

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